

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

FAO (MVA) No. 231 of 2005

FAO (MVA) No. 274 of 2005

FAO (MVA) No. 269 of 2006

Date of Decision: 25th September, 2006

FAO (MVA) No. 231 of 2005

Bhagsu Travels

Appellant

Versus

Smt. Veena Kumar and others

Respondents

FAO (MVA) No. 274 of 2005

National Insurance Company Ltd.

Appellant

Versus

Karan Verma and others

Respondents

FAO (MVA) No. 269 of 2006

National Insurance Company Ltd.

Appellant

Versus

Miss Anju Bala and others

Respondents

FAO (MVA) No. 231 of 2005

For the appellant: Mr. Sanjeev Kuthiala, Advocate

For respondent No.1: Mr. Ramkant Sharma, Advocate.

For respondent No.2: Mr. Javed Khan, Advocate.

For respondent No.3: Mr. Sandeep Sharma, Advocate.

For respondents 4&5: Mr. Ashwani Kaundal, Advocate.

For respondent No.6: Mr. G.D. Sharma, Advocate.

FAO (MVA) No. 274 of 2005

For the appellant: Mr. Ashwani Sharma, Advocate

For respondent No.1: Mr. Paraksh Thakur, Advocate.

For respondent No.2: Mr. Javed Khan, Advocate.

For respondent No.3: Mr. Sanjeev Kuthiala, Advocate.

For respondents 4&5: Mr. Ashwani Kaundal, Advocate.

For respondent No.6: Mr. G.D. Sharma, Advocate.

FAO (MVA) No. 269 of 2006

For the appellant: Mr. Ashwani Sharma, Advocate

For respondent No.1: Mr. Ramakant Sharma, Advocate.

For respondent No.2: Mr. Sanjeev Kuthiala, Advocate.

For respondent No.3: None.

For respondents 4&5: Mr. Ashwani Kaundal, Advocate.

For respondent No.6: Mr. G.D. Sharma, Advocate.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting¹?

V.K.Gupta, C.J. (Oral)

By this common judgment all these three appeals are being disposed of together.

An accident occurred on 29th July, 2001 involving two vehicles, HP-22-6899 and HP-39A-1149. Whereas claimants-respondents Karan Verma and Anju Bala in FAOs No. 274 of 2005 and 269 of 2006, have both, in their respective claim petitions claimed compensation from the learned Motor Accident Claims Tribunal on account of injuries sustained by them in the aforesaid accident, Veena Kumari, claimant-respondent in FAO No. 231 of 2005 claimed compensation from the learned Motor Accident Claims Tribunal for the loss suffered by her on account of death of her daughter Babli in the said accident. Whereas MACP No.68-D/2001 filed by Karan Verma, claimant-respondent was tried and disposed of by Shri C.B.Barowalia, MACT-II, Kangra at Dharamshala, the

¹Whether the reporters of Local Papers are allowed to see the Judgment?

other two claim petitions being MACT Petition No. 64-G/II/2001 and MACP No. 65-G/II-2001 were tried and disposed of by Shri R.L.Raghu, MACT-I, Kangra at Dharamshala. FAO No. 274 of 2005 relates to and arises out of MACP No.68-D/2001 and the other two FAOs, being FAO No. 231 of 2005 and FAO No. 269 of 2006 relate to and arise out of MACT Petition No. 64-G/II/2001 and MACP No. 65-G/II of 2001, respectively.

Various issues were framed by the Claims Tribunal in the three claim petitions, mostly common to all of them. In these three appeals, I am concerned only with the issue relating to the fact as to whether respondent Balbir Singh, the person driving Bus No. HP-39A-1149 at the time of accident held a valid driving licence and whether the owner of this bus M/s Bhagsu Travels through Rajiv Kumar Mahajan was guilty of the breach of policy condition with respect to the fact that he had taken due care and caution in checking and verifying whether the driver held a driving licence or not, or whether the owner was negligent and careless and thus guilty of breach of policy condition in not so checking and verifying the aforesaid fact.

In MACP No. 68-D/2001 Shri C.B.Barowalia, MACT-II, vide his judgment and award dated 22nd March,

2005, while dealing with the aforesaid issue, being Issue No.3, that is to say,

"Whether the drivers of the bus had not possessed effective and valid driving licenses? OPR",

relying upon the judgment of the Supreme Court in the case of United India Insurance Co.Ltd. vs. Lehu and others, reported in (2003) 3 SCC 338, and based on the discussion that even though the licence produced by Balbir Singh driver may or may not have been a genuine document took the view that at the time of his being engaged as a driver by M/s Bhagsu Travels, Rajiv Kumar Mahajan, its owner had taken care to see that he held a driving licence, which on the face of it looked genuine. Relying on the ratio in the aforesaid Supreme Court judgment and holding that the owner could not be considered guilty of the breach of the policy condition relating to a valid driving licence by the driver, fastened the liability to pay the award amount upon the Insurer-National Insurance Company.

In MACT Petition No.64-G/II/2001 Shri R.L.Raghu, MACT-I, vide judgment and award dated 22nd March, 2005 by a detailed discussion of the evidence brought on record returned a clear and categorical finding that Balbir Singh was not holding a valid

driving licence at the time of the accident and, therefore, even though the Insurer-National Insurance Company would be liable to pay the award amount to the claimants in the first instance, the owner M/s Bhagsu Travels would be liable to pay the amount of compensation to the Insurer ultimately. In this judgment and award the learned Tribunal did not consider the aspect as to whether the owner was or was not guilty of the breach of policy condition and whether on that account and on that basis the Insurer could or could not, be absolved of its initial as well as ultimate and final liability to pay the award amount.

In MACP No. 65-G/II-2001 Shri R.L.Raghu, the same learned Presiding Officer vide judgment and award dated 18th November, 2005 with respect to the same accident, however, even though in a very very brief discussion returned a clear finding that the licence produced by the driver Balbir Singh was not valid and effective yet, in the course of his discussion and finding on Issue No.2 and relying on the statement of the owner of the Bus Rajiv Kumar held that since he could not be held guilty of the breach of the policy condition, the award amount, at the initial stage as well as in the ultimate

analysis, would be payable by the Insurer to the claimants.

I have been taken through the statement of Rajiv Kumar Mahajan, owner of Bus No. HP-39A-1149. Undoubtedly this statement would apply to all the three claim petitions and all the three appeals because all the three claim petitions and three appeals relate to and arise out of the same accident. Also, because Balbir Singh was the person, who was driving the vehicle at the time of this particular accident.

Rajiv Kumar Mahajan, owner has clearly stated in his statement that when he engaged Balbir Singh as the driver, he had seen the licence issued by M.L.O., Nurpur, and had no reason to doubt about its authenticity or genuineness. Also he had made the driver to test drive the vehicle and found him suitable. Actually the evidence on record has proved and established the fact that M.L.O., Nurpur had issued the said licence upon its renewal even though there is a dispute whether prior to the renewal the original licence issued by M.L.O., Dehradun was genuine or fake.

In the case of Sukbir Singh v. National Insurance Co. Ltd. (CMPMO No. 160 of 2006), this Court vide a detailed judgment dated 6th September,

2006, after tracing the historical background about the principles relating to the liability of the Insurers as well as the Insurers avoiding their liability to pay, starting with the judgment of the Supreme Court in the case of Skandia Insurance Co.Ltd. vs. Kokilaben Chandravadan and others, reported in AIR 1987 SC 1184 and tracing it further to the case of United India Insurance Co. Ltd. vs. Lehru and others, reported in (2003) 3 SCC 338 and finally in the case of National Insurance Co. Ltd. vs. Swaran Singh and others, reported in 2004 ACJ 1, found itself of the firm opinion that the Insurer can absolve itself of its liability to pay the award amount only if the owner is guilty of breach of the policy condition and whether in fact the owner is guilty of such a breach or not has to be proved and established by the Insurer itself. Applying the aforesaid ratio and the principles culled therefrom and in the light of the clear testimony of the owner Rajiv Kumar Mahajan as also the fact that the Insurer did not take any steps in discharging the aforesaid onus, which lay upon itself, I have no hesitation in holding that even though there may have been a dispute or controversy or doubt about the genuineness or otherwise of the driving licence produced by the driver Balbir Singh, in all the three cases the

Insurer alone was liable to pay the award amount to the claimants, without, in any one of them, it being held entitled to recover it from the Insured because undoubtedly the Insured was not and could not have been held to be guilty of the breach of policy condition.

Based on the aforesaid reasoning, therefore, FAOs No. 274 of 2005 and FAO NO. 269 of 2006, both filed by National Insurance Company, are dismissed and FAO No. 231 of 2005 filed by the owner is allowed with all the consequences. Parties to bear their own costs.

In FAO No. 231 of 2005 Mr. Sanjiv Kuthiala, learned counsel appearing for the appellant submits that his client has deposited an amount of Rs.25,000/- in this Court as a security for obtaining interim relief. It is ordered and directed that this amount if lying in deposit in this Court, shall be returned to the appellant in FAO No. 231 of 2005 alongwith interest, if any, accrued thereupon upto date. Security furnished in the said appeal shall also stand discharged.

Because of the fact that FAO No. 231 of 2005 has been allowed and also the fact that other two appeals filed by the Insurer have been dismissed, I direct the Insurer to deposit the unpaid award

amounts in all the three cases before the Tribunals concerned with interest accrued thereupon within six weeks from today. On such deposits being made, the award amounts shall be disbursed to the claimants accordingly.

Whatever amounts have been deposited by the appellant National Insurance Company in FAOs No. 274 of 2005 and FAO No. 269 of 2006 shall be paid to the claimants with interest, if any, accrued thereupon, upto date as per the terms of the awards.

25th September, 2006
(C)

(V.K.Gupta), C.J.